

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTWON LESHAUN DISMUKE,)
)
)
Plaintiff,)
)
)
v.) Case No. 14 C 5803
) USCA No. 15-1754
STEVE STEMMET, etc., et al.,)
)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

Pro se plaintiff Antwon Dismuke ("Dismuke") has filed two self-prepared motions in this action that this Court dismissed a little over a year ago in its August 20, 2014 memorandum opinion and order ("Opinion I"):

1. One of those motions seeks to invoke Fed. R. Civ. P. ("Rule") 60(b)(4) on the premise that Opinion I's dismissal of Dismuke's Complaint and this action was purportedly void.
2. Dismuke's second motion invokes Fed. R. App. P. ("App. Rule") 4(a)(5)(A)(ii) as the predicate for granting an extension of time for Dismuke to appeal the dismissal.

This memorandum opinion and order will treat with the motions in the sequence just listed.

First, Dismuke mischaracterizes the order of dismissal as "void." As Opinion I reflects, this Court there conducted a 28 U.S.C. § 1915A(a) screening of the Complaint, set out the appropriate legal analysis and found that dismissal was called for under 28 U.S.C. § 1915A(b)(1).¹ Hence Dismuke's Rule 60(b)(4) motion is denied.

¹ See also this Court's February 23, 2015 memorandum opinion and order ("Opinion II").

As for Dismuke's second motion, he states there that he did not receive Opinion II until a month after its issuance -- on March 24, 2015 -- because this District Court's Clerk's Office had sent that document to the Kane County Sheriff's Office even though Dismuke had been transferred to the Robinson Correctional Center. That delay in delivery caused Dismuke's notice of appeal to be transmitted a day (or a few days) late.

Under those circumstances this Court finds that Dismuke has shown "excusable neglect or good cause" (the applicable standards under App. Rule 4(a)(5)(A)(ii)). It should be noted, however, that Dismuke's appeal has been taken from the order embodied in Opinion II and not from the original order of dismissal in Opinion I. It is for the Court of Appeals, of course, to determine the legal consequence of that fact.



Milton I. Shadur
Senior United States District Judge

Date: September 9, 2015